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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARLON BARILLAS et al.,

Plaintiffs and Respondents,

v.

FAZAR LINK MOHAMMED et al.,

Defendants and Appellants.

B212953

(Los Angeles County
Super. Ct. No. BC352549)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Elizabeth A. Grimes, Judge. Affirmed.

Samuel O. Ogbogu, Inc., and Samuel O. Ogbogu for Defendants and Appellants.

The Law Office of Eugene E. Kinsey and Curtis W. Herron for Plaintiff and
Respondent Marlon Barillas.

Law Offices of Leon Small and Leon Small for Plaintiff and Respondent Raul
Castilla.

* * * * *

Defendants and appellants Fazar Link Mohammed and Bibi Mohammed (collectively appellants) appeal following the entry of judgment against them on two complaints filed by their former contractors, plaintiffs and respondents Marlon Barillas (Barillas) and Raul Castilla (Castilla), seeking recovery of payments due on a residential construction project. We affirm. Appellants have forfeited their arguments on appeal because their opening brief failed to comply with the California Rules of Court. But even if we had found compliance, we would find no merit to appellants' contentions that Barillas was not properly licensed and that the trial court abused its discretion by excluding evidence regarding the licensing of one of Castilla's subcontractors.

FACTUAL AND PROCEDURAL BACKGROUND

In 1999, Bibi Mohammed (Bibi) acquired title to the property located at 406 North Fairview (property) in the City of Burbank (City). Sometime thereafter, appellants, Bibi and her husband Fazar Link Mohammed (Fazar), decided to demolish the existing house on the property and build a new house.

Facts Relating to Barillas.

On November 11, 2005, appellants and licensed general contractor Barillas entered into a written contract for the construction of a 3,180.39 square foot new house with a two car attached garage and an 18 by 35 square foot pool (project), based on approved plans and on City and state codes. Appellants agreed to pay a total sum of \$400,000 for the construction of the project, payable in specified installments.

The project passed City inspections that occurred in November and December 2005. After the first inspection of the project's foundation in November 2005, Barillas asked for one of his scheduled payments, but Fazar told Barillas that he would need to wait because he did not have the money to pay him. Fazar made a partial payment to Barillas at the end of November 2005. During the second inspection, the City approved the project's plumbing and slab work, but asked for some minor, nonstructural modifications to be made to the subfloor framing. Barillas made the modifications in

approximately one hour and the project passed a City inspection conducted the following day. Barillas again asked for payment of an installment due following the December 2005 inspection, and Fazar again said that he did not have the money. Fazar did not indicate that the quality of Barillas's work had anything to do with the nonpayment. At that point, Barillas stopped working on the project. He subsequently filed a mechanic's lien and sent a demand letter to appellants seeking payment of \$78,800 still owing for work he performed on the project.

A contractor who qualified as an expert at trial opined that \$105,087.14 was the reasonable value of the unpaid work Barillas performed on the project. He further opined that work Barillas performed met or exceeded that required by the plans and applicable codes. Appellants' expert contractor, on the other hand, opined that there were several defects in Barillas's construction of the project and that the reasonable value of the work Barillas performed was \$30,000.

Facts Relating to Castilla.

On November 12, 2005, appellants and Castilla, a licensed general contractor, entered into a similar written contract for the construction of a 3,180.39 square foot new house with a two car attached garage and an 18 by 35 square foot pool, based on approved plans and on local City and state codes. Appellants agreed to pay a total sum of \$430,000 for the construction in specified installments. According to Fazar, he initially did not hire Castilla because he was too expensive; later, however, he hired him to construct the project and correct certain work performed by Barillas. Castilla began working on the project in December 2005 and left the project during the spring of 2006. Fazar later convinced Castilla to sign a lien release in the amount of \$120,000 even though Castilla had received only \$70,000 in payments.

Subsequently, appellants hired a different contractor to complete the swimming pool on the property. Part of the work involved minor corrections to the existing work, including stretching the rebar and moving the gas line at a cost of \$1,200. The pool contractor, too, ultimately left the job because he was not being paid. At a much later

point, Fazar telephoned the pool contractor to ask him to testify that he moved the pool site, even though no such work had been performed. Fazar also indicated that he would pay the pool contractor once he testified that the pool site had been moved.

Pleadings, Trial and Judgment.

Barillas filed a complaint against appellants and Federal Home Loans Corporation in May 2006, seeking to foreclose on the mechanic's lien and to enforce a stop notice, and alleging additional claims for breach of contract, conversion, defamation and battery.¹ He alleged that appellants owed him approximately \$80,000 for labor, services and materials provided in connection with the construction contract. He filed a first amended complaint in September 2006 which alleged the same claims. Appellants answered, generally denying the allegations and asserting multiple affirmative defenses.

Castilla, too, filed a complaint against appellants alleging a breach of contract claim and common counts.² Appellants answered, generally denying the allegations and asserting several affirmative defenses.

Appellants cross-complained against Barillas and Castilla, alleging claims for breach of contract, conversion and slander of title. Barillas and Castilla denied the allegations and raised multiple affirmative defenses.

A court trial commenced on October 10, 2008. Following a three-day trial, the trial court ruled that Barillas was entitled to entry of judgment in the amount of \$71,601.98, plus interest at the legal rate from December 5, 2005. That figure was comprised of the \$78,800 due under the contract plus \$1,600 for foundation forms belonging to Barillas, less a credit for \$1,200 that appellants paid to the pool contractor to correct Barillas's work on the pool and less an amount for concrete and lumber purchased by appellants. The trial court further ruled that Castilla was entitled to entry of judgment

¹ Barillas later dismissed Federal Home Loans Corporation from the action.

² Castilla's complaint is not a part of the record on appeal.

in the amount of \$32,000, plus interest at the legal rate from July 31, 2006. Finally, the trial court entered judgment in favor of Barillas and Castilla on the cross-complaint.

This appeal followed.

DISCUSSION

Appellants contend the judgment should be reversed for two reasons. First, they contend that Barillas was precluded from bringing suit against them because he was not properly licensed for the work he performed. Second, they contend that the trial court should have permitted them to inquire about the licensing status of one of Castilla's subcontractors. We need not reach these issues in view of appellants' deficient opening brief. Nonetheless, we explain why the issues lack merit.

I. Appellants Have Forfeited Their Claims on Appeal.

Well-settled legal principles guide our analysis. Because a trial court's decision is presumed to be correct, it is the appellant's burden on appeal to show that the court prejudicially erred. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140–1141; *Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631–632.) As part of satisfying that burden, the appellant must provide citations to the record in the opening brief, as “[t]he reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment.” [Citations.]” (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) Accordingly, California Rules of Court, rule 8.204(a)(1)(C), requires that the brief “[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.”³

Here, with the exception of three references to the reporter's transcript in the opening brief's introduction, appellants have failed to support their statement of facts or

³ All further rules citations are to the California Rules of Court.

argument with citations to the record.⁴ “If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived.” (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; accord, *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1245–1246 & fn. 14; *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239.) Because appellants’ opening brief is essentially devoid of any citations to the record, we conclude appellants have forfeited their contentions on appeal. (*Nwosu v. Oba, supra*, at p. 1247; *Miller v. Superior Court* (2002) 101 Cal.App.4th 728, 743; *Guthrey v. State of California, supra*, 63 Cal.App.4th at pp. 1115–1116.)

II. Appellants’ Claims Lack Merit.

Even if we were to find no waiver, we would find no merit to appellants’ contentions. As to Barillas, appellants contend that, as a matter of law, his Class B general contractor’s license was not the appropriate classification to permit him to construct a pool on the property. According to appellants, absent a proper license, Barillas was precluded from maintaining an action against them. (See Bus. & Prof. Code, § 7031, subd. (a).)⁵ “The interpretation of statutes, as well as administrative regulations, presents questions of law. [Citation.] Questions of law are subject to independent review on appeal. [Citation.]” (*Hazard, Jr. Enterprises, Inc. v. Insurance Co. of the West* (1997) 52 Cal.App.4th 1088, 1092 (*Hazard*).)

⁴ Pursuant to rule 8.204(e)(2)(B), we initially struck the opening brief and permitted appellants leave to file a brief that complied with rule 8.204(a)(1)(C). In response to our order, appellants filed a brief that not only contained citations to the record, but also added new factual recitations and arguments. Because those new matters were submitted beyond the time permitted to file an opening brief and failed to comply with our limited order, we struck the later-filed opening brief and reinstated the prior opening brief, expressly advising appellants that we would determine the merits of the appeal on the basis of the earlier brief.

⁵ Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

Section 7057, subdivision (a) defines a general building contractor as “a contractor whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of at least two unrelated building trades or crafts, or to do or superintend the whole or any part thereof.” Section 7057, subdivision (b) further provides: “A general building contractor may take a prime contract or a subcontract for a framing or carpentry project. However, a general building contractor shall not take a prime contract for any project involving trades other than framing or carpentry unless the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor to perform the work. A general building contractor shall not take a subcontract involving trades other than framing or carpentry, unless the subcontract requires at least two unrelated trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification. The general building contractor may not count framing or carpentry in calculating the two unrelated trades necessary in order for the general building contractor to be able to take a prime contract or subcontract for a project involving other trades.”

Highlighting the portion of the statute that provides a general contractor may not take a prime contract for any project involving trades other than framing “unless the general building contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor to perform the work,” appellants argue that Barillas was improperly licensed to construct a pool because he neither held a Class C-53 pool license nor hired an appropriately licensed subcontractor to do the work. (See § 7057, subd. (b).) But appellants’ construction of section 7057, subdivision (b) is patently inconsistent with the principle that a statute should be construed so as to avoid rendering statutory language surplusage. (E.g., *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2006) 40 Cal.4th 1, 14.) Section 7057, subdivision (b) expressly provides that a general contractor may enter into

a contract for a project involving trades other than framing or carpentry if he holds the appropriate license classification or subcontracts with an appropriately licensed contractor to do the work, or if “the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry”

Here, the evidence showed that Barillas held a license from the Contractors State License Board under the classification “B General Building Contractor.” Barillas’s construction expert testified that the project involved more than two unrelated trades other than framing and carpentry, including foundation, plumbing, electrical and mechanical work. Accordingly, section 7057, subdivision (b) permitted him to contract to perform work for all aspects of the project, including the construction of a pool. As explained in *Hazard, supra*, 52 Cal.App.4th at page 1095: “The plain words of the statute [section 7057] show a general building contractor’s operation is not limited solely to the construction of structures. A general building contractor is defined as one ‘whose principal contracting business is in connection with any structure built [i.e., remodeling or repair], being built [i.e., new construction], *or to be built*. . . . requiring in its construction the use of more than two unrelated building trades or crafts’ (§ 7057, italics added.) The phrase ‘in connection with any structure . . . *to be built*’ is meaningless unless general building contractors are authorized to perform, or superintend, work limited to site preparation for future construction or alteration of a structure, or for construction of, for instance, sidewalks, landscaping, pools, fencing and other exterior components of residential or commercial development with respect to which the construction of the buildings is yet to occur.” (See also *Martin v. Mitchell Cement Contracting Co.* (1977) 74 Cal.App.3d 15, 19 [“‘If a person is licensed and classified as a general contractor, he can take a contract for construction business for any type of construction work or contract. . . . Hence, if a general contractor may make a general contract in every field of activity, or craft, or trade, he may likewise make a contract covering any lesser number of crafts or trades’”].) Because Barillas held the appropriate license for the project, nothing in section 7031 barred him from maintaining his action against appellants.

As to Castilla, appellants contend that the trial court abused its discretion in sustaining Castilla's objection to the question whether a framing subcontractor he hired was properly licensed. The trial court ruled that the subcontractor's license was irrelevant, since only Castilla, and not the subcontractor, was seeking recovery. On appeal, appellants contend that whether the subcontractor was licensed was relevant because the work was poorly performed and thus did not warrant payment. We review "any ruling by a trial court as to the admissibility of evidence for abuse of discretion." (*People v. Alvarez* (1996) 14 Cal.4th 155, 201; accord, *City of Ripon v. Sweetin* (2002) 100 Cal.App.4th 887, 900.) An abuse of discretion implies an "arbitrary determination, capricious disposition or whimsical thinking." (*In re Cortez* (1971) 6 Cal.3d 78, 85.) To prevail, the appellant must establish that the trial court's ruling "exceeded the bounds of reason." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) Moreover, "[t]he trial court's error in excluding evidence is grounds for reversing a judgment only if the party appealing demonstrates a 'miscarriage of justice'—that is, that a different result would have been probable if the error had not occurred. [Citations.]" (*Zhou v. Unisource Worldwide* (2007) 157 Cal.App.4th 1471, 1480.)

We find no basis to disturb the judgment. Preliminarily, we note that the trial court did not preclude appellants from adducing evidence concerning the quality of the framing work. Rather, it sustained an objection to the question whether the framing contractor provided Castilla with a license or otherwise established to him that he was licensed in California. As the trial court reasoned, section 7031 bars an unlicensed contractor from bringing an action to collect on work for which a contractor's license is required. The section provides in relevant part: "[N]o person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person" (§ 7031, subd. (a).) Here, because the framing subcontractor was not a

party to the lawsuit, he did not “bring or maintain any action.” (*Ibid.*) Nor was he awarded any damages and thus did not “recover in law or equity in any action.” (*Ibid.*) While section 7031 applies to subcontractors through section 7026, and “[h]ence, an unlicensed subcontractor may not recover compensation for his work from either the owner or the general contractor,” the contractor who sought recovery in this action—Castilla—was properly licensed. (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 997.) Under these circumstances, the trial court properly exercised its discretion to exclude as irrelevant any evidence concerning the framing subcontractor’s license.

DISPOSITION

The judgment is affirmed. Barillas and Castilla are entitled to their costs on appeal.

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_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ